

COURTESY COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by ELIOT
SPITZER, ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

Plaintiffs,

-against-

MARIAN MELLER d/b/a POLAND EMPLOYMENT
AGENCY,

Defendant.

CV 05-3142
CONSENT DECREE
FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 29 2005 ★

BROOKLYN OFFICE

ROSS, J.

MATSUMOTO, M.J.

This Consent Decree ("Decree") is entered into by and between plaintiffs, THE PEOPLE
OF THE STATE OF NEW YORK, by ELIOT SPITZER, ATTORNEY GENERAL OF THE
STATE OF NEW YORK ("OAG"), and defendant, MARIAN MELLER d/b/a POLAND
EMPLOYMENT AGENCY ("Poland Employment").

WHEREAS, Poland Employment is subject to the strictures of 42 U.S.C. § 1981, New
York Executive Law § 296, New York Civil Rights Law § 40, New York General Business Law
§ 185; and New York City Administrative Code § 8-107(1);

WHEREAS, plaintiffs, through the filing of a complaint, commenced the above-
captioned lawsuit in the United States District Court for the Eastern District of New York
alleging that defendants violated 42 U.S.C. § 1981, the New York Human Rights Law, Executive
Law § 296; the New York Civil Rights Law § 40-c; the New York General Business Law § 185;
and the New York City Administrative Code § 8-107(1).

WHEREAS, the complaint alleges that Poland Employment has discriminated against
individuals seeking employment by making referrals for employment based on the sex, age,
and/or ancestry of the job-seekers,

- 1.5. **"Employment agency"** means any person or business undertaking to procure employees or opportunities to work.
- 1.6. **"Applicant"** means any person seeking or inquiring about Poland Employment's services in applying for employment and/or identifying employment opportunities.
- 1.7. **"Employer"** means any person or entity seeking or inquiring about Poland Employment's services in identifying, screening or referring applicants for employment.

PART TWO: PERMANENT INJUNCTIVE RELIEF

From the date of this Decree forward, Poland Employment shall be and hereby is permanently enjoined as follows:

- 2.1. Poland Employment shall comply fully with the obligations, terms and conditions of 42 U.S.C. § 1981, New York Executive Law § 296, New York Civil Rights Law § 40, New York General Business Law § 185; and New York City Administrative Law § 8-107.
- 2.2. Poland Employment shall not ask employers whether they have preferences with respect to the age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation of the individual(s) they seek to hire.
- 2.3. Poland Employment shall not consider any applicant's actual or perceived age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation when determining whether to refer that applicant to an employer.
- 2.4. Poland Employment shall not make referrals for employment based on the actual or perceived age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation of the applicant for employment.
- 2.5. Poland Employment shall not record on any job applications, forms, or computer database, either directly, or indirectly through the use of codes, the actual or perceived

- 1.5. "Employment agency" means any person or business undertaking to procure employees or opportunities to work.
- 1.6. "Applicant" means any person seeking or inquiring about Poland Employment's services in applying for employment and/or identifying employment opportunities.
- 1.7. "Employer" means any person or entity seeking or inquiring about Poland Employment's services in identifying, screening or referring applicants for employment.

PART TWO: PERMANENT INJUNCTIVE RELIEF

From the date of this Decree forward, Poland Employment shall be and hereby is permanently enjoined as follows: — — —

- 2.1. Poland Employment shall comply fully with the obligations, terms and conditions of 42 U.S.C. § 1981, New York Executive Law § 296, New York Civil Rights Law § 40, New York General Business Law § 185; and New York City Administrative Law § 8-107
- 2.2. Poland Employment shall not ask employers whether they have preferences with respect to the age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation of the individual(s) they seek to hire.
- 2.3. Poland Employment shall not consider any applicant's actual or perceived age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation when determining whether to refer that applicant to an employer.
- 2.4. Poland Employment shall not make referrals for employment based on the actual or perceived age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation of the applicant for employment.
- 2.5. Poland Employment shall not record on any job applications, forms, or computer database, either directly, or indirectly through the use of codes, the actual or perceived

age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation of applicants for employment.

- 2.6. Poland Employment shall not record on any forms or computer database, either directly, or indirectly through the use of codes, the preferences of employers with respect to the age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation of the individual(s) they seek to hire.
- 2.7. Poland Employment shall not categorize jobs in any medium, including but not limited to its website, as being open only to applicants of a particular age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation.
- 2.8. In the event that an employer communicates to Poland Employment that he/she prefers to hire an applicant of a particular age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation, Poland Employment will affirmatively state that it is against the law to make referrals for employment on such bases and that it will not do so.

PART THREE: MONETARY RELIEF

- 3.1 Poland Employment shall pay \$5000 in penalties, damages, costs and fees. That amount will be payable in 35 installments of \$139 and a 36th installment of \$135. The first installment shall be payable within one week of the Effective Date and subsequent installments payable every thirty (30) days thereafter until such time as the full amount has been paid.
- b) The next such payment of \$139 shall be due no later than one month from the date of execution of the Agreement, with each subsequent payment due on a monthly basis.

c) The 36th payment shall be for the sum of \$135.

- 3.2 Payments will be in the form of certified or bank checks made out to the New York State Department of Law and forwarded to the Office of Attorney General, Civil Rights Bureau, 120 Broadway, New York, New York 10271, Attention: Dennis Parker, Chief, Civil Rights Bureau.

PART FOUR: FORMS

- 4.1 Within 30 days of the effective date of this Decree, Poland Employment shall submit an "Application for Employment" form to the OAG for approval. This shall be the only form it uses to collect information about applicants for employment. Poland Employment shall maintain all such forms for the term of the Decree.
- 4.2 Within 30 days of the effective date of this Decree, Poland Employment shall submit an "Employer Information Form" to the OAG for approval. This shall be the only form it uses to collect information about individual(s) an employer seeks to hire. Poland Employment shall maintain all such forms for the term of the Decree.
- 4.3 Within 30 days of the effective date of this Decree, Poland Employment shall submit a "Receipt" form to the OAG for approval. This form shall indicate the amount paid, any balance due, and the fact that the fee is refundable if Poland Employment does not obtain employment for that applicant. This shall be the only receipt given to applicants as proof of payment of fees. Poland Employment shall maintain all such forms for the term of the Decree.
- 4.4 Poland Employment shall not change or modify the above-referenced forms without prior approval of the OAG.

- 4.5 Poland Employment shall have the above-referenced forms translated into Polish by a certified translator, and shall give copies of those forms to Polish speaking individuals, as applicable.
- 4.6 Within three (3) months after the Effective Date, Poland Employment shall permanently delete any information regarding (a) the age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation of any Applicant and (b) the preferences or requirements of any Employer regarding any of the aforementioned attributes from all Poland Employment Records created within three (3) months prior to the Effective Date. For purposes of this paragraph, the term "Records" shall mean all any non-computerized forms or documents containing information about Applicants or Employers.

PART FIVE: SIGNAGE

- 5.1 Poland Employment shall post in conspicuous locations in its office two signs in English and Polish that read as follows:

Poland Employment is an equal opportunity employment agency that does not discriminate on the basis of age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation.

Poland Employment staff may not ask job applicants questions about their age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation.

Complaints of discrimination may be brought to the attention of the New York State Attorney General's Office, Civil Rights Bureau, 120 Broadway, 23rd Floor, New York, New York 10271 (Telephone number 212-416-8250).

- 5.2 The font size of such sign must be no smaller than 68 point and must be in bold print.

PART SIX: ADVERTISING

- 6.1 Any advertisements in print media placed by Poland Employment shall include the following text:

Poland Employment is an equal opportunity employment agency that does not discriminate in the referral of job applicants on the basis of age, race, creed, color, ancestry, national origin, sex, disability, marital status, or sexual orientation.

Such advertisements shall be in English in English language media and in Polish in Polish in Polish language media.

- 6.2 In the event that Poland Employment operates a website, Poland Employment shall post the text specified in paragraph 3.3 in English and Polish in a conspicuous place on the home page of its website.

PART SEVEN: TRAINING

- 7.1 Within 10 days of the hiring of any employee, Poland Employment shall train that employee on the requirements of 42 U.S.C. § 1981, New York Executive Law § 296, New York Civil Rights Law § 40-c, and New York City Administrative Code § 8-107(1), as well as the requirements of the Decree, using the Non-Discrimination Training Manual annexed as Exhibit A. Poland Employment shall have such Manual translated into Polish by a certified translator. Each employee that receives the training shall receive a copy of the Non-Discrimination Manual and acknowledge in writing that he or she has read and understood the material and will comply with the legal requirements set forth therein. Poland Employment shall retain a copy of such acknowledgment for the term of this Decree.

- 7.2 Within five (5) business days after a new employee commences working for Poland Employment, such employee shall be given the training and the materials, and execute the acknowledgment, described in paragraph 7.1 above. Poland Employment shall maintain such acknowledgments for the term of this Decree.

PART EIGHT: APPLICANT INFORMATION SHEET

- 8.1 Poland Employment shall provide all job applicants with a copy of the "Applicant Information Sheet" attached as Exhibit B. Poland shall have Exhibit B translated into Polish by a certified Polish translator. This Information Sheet must be signed by each applicant, and Poland Employment shall maintain such records for the term of this Decree.

PART NINE: FEES

- 9.1 Poland Employment shall not charge any gross fee for placement of domestics, household employees, and unskilled or untrained manual laborers in excess of the fee ceiling described in New York General Business Law § 185(5), including any amendments thereto that may be made from time to time.
- 9.2 In the event that Poland Employment charges a deposit or advance fee, such deposit or advance fee may not exceed the maximum fees described in New York General Business Law § 185(5). Additionally, such deposit or advance fee shall be offset against any fee charged or accepted when employment is obtained. Any deposits or advance fees charged by Poland Employment shall be fully refundable.
- 9.3 Upon receipt of any fees paid by an applicant, Poland Employment shall provide the applicant with the Fee Receipt (Exhibit C), which receipt shall indicate the amount paid,

any balance due, and the fact that the fee is refundable if Poland Employment does not obtain employment for that applicant.

PART TEN: COMPLAINTS

- 10.1 Within fourteen (14) days after Poland Employment receives any written complaint from an individual alleging discrimination by Poland Employment in the recruitment, screening, or referral of applicants for employment, a Poland Employment staff person shall complete and provide to the OAG a Complaint Form, a copy of which is annexed as Exhibit C.

PART ELEVEN: RECORDKEEPING AND REPORTING

- 10.1 During the three year period following the Effective Date, Poland Employment shall maintain the following records:
- (a) all Applications for Employment;
 - (b) all Employer Information Forms;
 - (c) copies of all receipts given to applicants as proof of the applicants' payment of fees to Poland Employment;
 - (d) all sign-in forms from training sessions;
 - (e) copies of all signed Applicant Information Sheets.
- 10.2 During the three year period following the Effective Date, upon request, Poland Employment shall provide to the OAG on a biennial basis copies of the following documents:
- (f) all Employer Information Forms filled out during the biannual period;
 - (g) copies of all signed Job Applicant Information Sheets given to job applicants during the biennial period.

- 10.3 Upon request by the OAG, Poland Employment shall send copies of any documents requested to the OAG within five business days of such request.

PART ELEVEN: JURISDICTION AND OTHER PROVISIONS

- 11.1 Seven (7) months after the Effective Date, and every six (6) months thereafter, the OAG shall request, and Poland Employment shall provide, within fourteen (14) days of said request, the following material created during four of the preceding months, which shall be selected at the OAG's discretion:

- (a) Employer Information Forms;
- (b) printouts of all data concerning Employers stored in a computer database;
- (c) Fee Receipts; and
- (d) Applicant Information Sheets.

- 11.2 The OAG, upon reasonable notice to Poland Employment, shall have access, at a reasonable time and place, to any documents Poland Employment is required to maintain under the terms of this Decree or any documents the OAG believes related to Poland Employment's compliance with this Decree. This Decree does not in any way impair or affect the right of the OAG to obtain documents from Poland Employment pursuant to subpoena under N.Y. Executive Law § 63(12).

- 11.3 The OAG, upon reasonable notice to Poland Employment, shall have access, at a reasonable time and place, to Poland Employment's employees and facilities as necessary to determine Poland Employment's compliance with this Decree.

PART TWELVE: JURISDICTION AND OTHER PROVISIONS

- 12.1 This Decree, when fully executed and performed by Poland Employment to the reasonable satisfaction of plaintiffs, will resolve all claims against Poland Employment that were raised in the complaint filed by plaintiffs in this action.
- 12.2 Notwithstanding any provision of this Decree to the contrary, plaintiffs may, in their sole discretion, grant written extensions of time for Poland Employment to comply with any provision of this Decree.
- 12.3 This Decree shall become effective upon its execution by all parties and its entry by the Court. Its term shall be three years unless extended by the Court for good cause shown, except that the Decree shall remain in effect until \$5000 has been paid pursuant to Part Three above.
- 12.4 The signatories to this Decree warrant and represent that they are duly authorized to execute this Decree and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Decree to effectuate its terms;
- 12.5 This Decree may be executed in one or more counterparts, all of which shall be deemed one and the same instrument.
- 12.6 This Decree shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto, provided, however, that no assignment by any party hereto shall operate to relieve such party of its obligations hereunder.
- 12.7 All of the terms of this Decree are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all parties hereto approved by the Court, or with Court approval.

- 12.8 The Court shall retain jurisdiction over the parties and the matter and retain the power to order all applicable equitable remedies to ensure compliance with this Decree, including, but not limited to, contempt.
- 12.9 This Decree supersedes and renders null and void any and all written or oral prior undertakings or agreements between the parties regarding the subject matter hereof.
- 12.10 The parties hereby waive and shall not have any right to appeal any of the terms of this Decree or in any way challenge the validity of any of the terms of this Decree in any forum.
- 12.11 If any of the provisions, terms, or clauses of this Decree are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Decree shall remain valid and binding on the parties.
- 12.12 The parties may seek to enforce this Decree by motion before the Court to the full extent of the law, however, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention.
- 12.13 Nothing in this Decree is intended to confer any right, remedy, obligation or liability upon any person or entity other than the parties hereto and their respective successors.
- 12.14 The use of the singular form of any word includes the plural and vice versa.
- 12.15 All communications and notices regarding this Decree shall be sent by first class mail and facsimile, if twenty-five (25) pages or less in length, to:

OAG
Dennis Parker, Bureau Chief
Office of the NYS Attorney General

Poland Employment
Fred Lichtmacher, Esq.
60 East 42nd Street

Civil Rights Bureau
120 Broadway, 23rd Floor
New York, New York 10271

Suite 2001
New York, New York 10165

Tel. (212) 416-8240
Fax (212) 416-8074

Tel. (212) 922-9066
Fax (212) 922-9077

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Consent Decree on the dates written below.

ELIOT SPITZER

New York State Attorney General
120 Broadway
New York, New York 10271

By: 

Dennis D. Parker

Date: 6/8/05

**MARIAN MELLER D/B/A POLAND
EMPLOYMENT**

861 Manhattan Avenue, 1st Floor
Brooklyn, New York 11222

By: 

Marian Meller

Date: 5/26/05

SO ORDERED:


UNITED STATES DISTRICT JUDGE

Dated: New York, New York

EXHIBIT A

Non-Discrimination Training Manual

Local, state and federal law prohibit employment agencies from discriminating against job applicants on the basis of their age, race, creed, color, national origin, sex, disability status, marital status, or sexual orientation. The purpose of these laws is to ensure that all individuals have an equal opportunity to seek employment.

These training materials are designed to provide you instruction in how to provide job referral services in a nondiscriminatory manner. If you have any questions about these materials, or if questions concerning discrimination arise on the job, please seek guidance from your supervisor.

What does the law provide?

The law prohibits employment agencies from discriminating against job applicants on the basis of their:

- | | |
|--------------------------------------|------------------------------------|
| • age | • sex |
| • race | • disability status |
| • creed | • marital status (whether they are |
| • color | married, single, divorced) |
| • national origin (what country they | • sexual orientation. |
| are from) | |

What, exactly, is prohibited?

Employment agencies may not:

- *use job applications* that ask job applicants to provide information about their age, race, creed, color, national origin, sex, disability status, marital status, or sexual orientation;
- *ask job applicants questions* about their age, race, creed, color, national origin, sex, disability status, marital status, or sexual orientation;
- *use codes or notations* to indicate the age, race, creed, color, national origin, sex, disability status, marital status, or sexual orientation of job applicants;
- *ask prospective employers whether they have preferences* with respect to the age, race, creed, color, national origin, sex, disability status, marital status, or sexual orientation of the person they seek to hire;
- *use codes or notations* to indicate employers' preference with respect to the age, race, creed, color, national origin, sex, disability status, marital status, or sexual orientation of the person they seek to hire;
- *make referrals, or refuse to make referrals*, based on the age, race, creed, color, national origin, sex, disability status, marital status, or sexual orientation of job applicants.

What questions may I ask a job applicant?

When interviewing a job applicant, an employment agency may ask questions that seek to determine the individual's identity, qualifications and availability for employment. For example, an employment agency may ask a job applicant to provide his or her:

- name
- address
- telephone number
- email address
- qualifications
- work history and references
- educational background
- legal authorization to work in the United States.
- language abilities

An employment agency may also ask questions designed to determine the type of job placement the job applicant is seeking.

Are there any questions I may not ask a job applicant?

Yes. You may not ask a job applicant, either orally or through the use of a written form, to disclose her age, race, creed, color, national origin, sex, disability status, marital status, or sexual orientation.

You also may not ask questions that *indirectly* solicit the information described above. Examples of questions that you may not ask because they indirectly solicit impermissible information are:

- What is your date of birth?
- What country were you born in?
- What is your native language?
- Are you under the care of a physician?
- Do you wish to be addressed as "Miss" or "Mrs."?

What do I do if a job applicant volunteers information about her age, national origin, etc.?

In the course of a conversation, a job applicant may tell you information about her age, race, national origin, marital status, etc. For example, she may volunteer that she is married, or that she has children. It is not unlawful for her to volunteer this information to you. However, you may not write it down or record it in any way. Likewise, you may not factor this information in to any decisions you might make about whether to refer a job applicant to a particular employer.

What questions may I ask a prospective employer?

When interviewing prospective employers, you may ask them for details about the position they are seeking to fill and their particular hiring needs. For example, you may ask questions about:

- the type of job they want to fill (i.e. nanny, gardener)
- the requirements of the job
- the days/hours of the job
- the salary to be offered
- the fringe benefits to be offered
- the work experience required
- the educational experience required

Are there any questions I may not ask a prospective employer?

Yes. You may not ask employers whether they have a preference or requirements regarding the age, race, creed, color, national origin, sex, disability status, marital status, or sexual orientation of the person they seek to hire.

You also may not ask questions that *indirectly* solicit whether employers have such preferences or requirements. Examples of questions that are prohibited because they indirectly solicit information about employer preferences or requirements are:

- Would you be willing to hire an applicant of a particular race?
- What country is your current nanny from?

What do I do if an employer tells me he doesn't want me to refer any job applicants who are of a particular race, national origin or age?

In the course of your work, employers may tell you that they have a preference or requirement regarding the person they seek to hire. For example, they may tell you that they do not want to hire someone who is of a particular race or from a particular country. They may also tell you they prefer to hire someone who is of a particular age.

If an employer tells you her preferences or requirements and asks you to refer only those job applicants who are of any particular race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation, you must inform that employer that it is against the law to make referrals on those bases and that you will not do so.

Example

Employer: "I would like to hire a nanny to care for my children. I would prefer to hire someone who is in her twenties and I don't want to hire anyone who is from France or Spain. Can you help me?"

Lawful response: "Our agency is happy to help you find a nanny, but I must inform you that it is unlawful for us to make referrals based on the age or national origin of the job applicant, and we will not do so. Our agency has many excellent, well-qualified nannies available. I'm sure that we can refer someone to you who can do a great job.

I have been given a copy of the Non-Discrimination Training Manual, and I have fully read and understood its contents. I hereby agree to comply with the legal requirements and instructions set forth herein.

Name

Date

EXHIBIT B

JOB APPLICANT INFORMATION SHEET (ENGLISH)

Employment Agencies May Not Discriminate Against Job Applicants

It is illegal for an employment agency to ask job applicants questions about their race, nationality, age, religion, sexual orientation, disability, or marital status. It is also illegal for an employment agency to make referrals, or refuse to make referrals, based on those same factors.

If you believe that an employment agency has discriminated against you, you may file a complaint with:

New York State Office of the Attorney General, Civil Rights Bureau
120 Broadway, 3rd Floor
New York, NY 10271
(212) 416-8250

The Law Limits the Fees Employment Agencies May Charge

Employment agencies may charge a fee to applicants who are looking to be referred to jobs. Under current law, if you are applying for a job as a domestic, household employee, unskilled or untrained manual workers, or laborer, the MAXIMUM fees the agency may charge you are as follows:

- 10% of the first full month's salary or wages (where no meals or lodging provided)
- 12% of the first full month's salary or wages (where one meal per day is provided)
- 14% of the first full month's salary or wages (where two meals per day are provided)
- 18% of the first full month's salary or wages (where lodging and three meals per day are provided)

For example, if you are hired as a live-out nanny and will be earning a monthly salary of \$1,600 with no meals included, the maximum fee the agency may charge you is \$160.

These amounts are subject to change; if an employment agency attempts to charge an amount higher than those specified above, contact the New York City Department of Consumer Affairs by calling 311 to learn if the fee limits have been changed, and if not, bring the matter to the attention of the Department of Consumer Affairs or the New York State Attorney General's Office at the number listed above.

If The Agency Charges a Deposit, That Deposit Must Be Fully Refundable

If you are applying for work as a domestic, household employee, unskilled or untrained manual worker, or laborer, the agency may charge you a deposit. However, that deposit and any subsequent placement fee may not, in total, be more than the fees described above. Therefore, if you do find work through the agency, the agency must deduct the deposit you paid from any placement fee it charges you. Also, the law requires agencies to refund deposits upon your request. *So, if you do not get a job through the employment agency, you may ask for your deposit back and the agency MUST return it to you immediately.*

Employment Agencies Must Provide Receipts for All Fees They Charge

Employment agencies must provide job applicants a receipt for any fee or deposit paid. The receipt must state the job applicant's name, the name and address of the employment agency, the date and amount of the fee or deposit.

I have received and read this Applicant Information Sheet.

SIGNED _____

DATE _____

EXHIBIT C

EMPLOYMENT AGENCY COMPLAINT FORM

Instructions:

1. Please TYPE or print clearly in dark ink.
2. You must complete the entire form.
3. Make sure copies (not originals) of all relevant papers concerning the complaint are attached.

A. Complainant

Name:

Address:

Phone: (Home) _____

B. Employee(s) or Other Personnel Involved in Complaint

Name:

Position:

C. Witness(es)

Name:

Address:

Phone:

(Home)

(Work).

D. Nature of Complaint

(Attach additional pages if necessary)

[illegible]